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Book Review. The Convergence of the Continental and the Common Law Model of Criminal Procedure

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The Convergence of the Continental and the Common Law Model of Criminal Procedure

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Reviewing:

Phil Fennell, Christopher Harding, Nico Jörg, and Bert Swart (eds.), *Criminal Justice in Europe: A Comparative Study.* Oxford: Clarendon Press, 1995, 404 pp.

There are two main approaches to criminal procedure in most of the world: the inquisitorial and the accusatorial. In the inquisitorial model, a theoretically neutral judicial officer conducts the criminal investigation and a judge (or a panel of judges), who has full access to the investigation file, determines guilt or innocence. The trial is a relatively brief and informal affair conducted by a presiding judge without a jury; the accused does not necessarily have a right not to testify and, until recently, neither counsel had much of a role. This civil law system is, to a greater or a lesser degree, the norm throughout continental Europe.

The accusatorial model, by contrast, starts with a police investigation that is openly not neutral but rather, at least after it has focused on a suspect, is aimed at collecting evidence that will prove his guilt. Then an adversarial trial is held before a neutral decisionmaker, judge or jury,

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who has no prior knowledge of the case. The attorneys conduct the trial, with each side attempting to convince the decisionmaker of the rectitude of her position. This common law system prevails in Britain and its former colonies, including Australia, Canada, and the United States.

Each system has certain advantages and disadvantages. The continental model has the distinct advantage of being much more efficient than the common law approach. The pretrial investigation is, at least in theory, more neutral, with the examining magistrate using the resources of the state to uncover all the evidence, wherever it may lead. A jury need not be selected and the trial is conducted expeditiously by the judge, rather than by the opposing parties (though, nowadays, there is more room for attorney questioning and arguments than in the past). Because the system works quite efficiently, plea bargaining is not necessary to reduce the caseload, and in continental countries this practice is circumscribed.[1] That is, in the usual case, the prosecution must establish the defendant's guilt through the presentation of testimony, even though, following that presentation, the defendant may choose to confess. Similarly, witnesses at trial, including experts, are witnesses of the court, not of the parties, and are questioned in a way that is designed to produce balanced, rather than biased, testimony.

But these very advantages contain inherent weaknesses. If a defendant does not have a vigorous advocate who is prepared to examine the evidence solely from the defendant's point of view, then there is a greater chance that an innocent person may be convicted simply because, on the most obvious view of the evidence, he appeared to be the likeliest suspect. There is something too cozy, to one raised in the adversarial tradition, about an examining magistrate passing along a file, which sets forth a detailed case for the defendant's guilt, to her judicial colleague at the trial court. We are not comfortable, especially in the United States, where distrust of government is mother's milk, with a system in which government officials determine guilt with little input from the defendant's advocate, and none from ordinary citizens on a jury.[2]

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1 See *infra* note 44.

2 "Americans tend to equate inquisitorial systems with coercive interrogation, unbridled search, and unduly efficient crime control." Abraham Goldstein, *Reflections on*

The adversarial approach, with its trial by combat aura, seems more fair to us. Each side is represented by a committed advocate, fighting to the rhetorical death for his cause, with the final decision rendered, not by faceless bureaucrats, but by a commonsense consensus of the defendant's peers. Every piece of the government's case, which is vigorously presented by the prosecuting attorney, is with equal vigor contested by the defendant's lawyer, with only the fittest evidence surviving. The inherent hostility that every government official feels toward those accused of crime is displayed openly and challenged, rather than operating *sub silentio* against the defendant. Since this system mistrusts the government, the defendant is endowed with an entire quiver of rights that she may launch against the government at various stages of the proceeding, including rights against unreasonable searches, to silence, to counsel, and to confront witnesses against her.

But this combative approach also contains inherent weaknesses. For one thing, the prosecution typically has greater resources than the defense, including a professional police force to carry out investigations and a whole legal department of well-paid prosecutors who are generally skilled and enthusiastic. The defendant, by contrast, is likely to be represented by a court-appointed attorney or public defender, who will have few investigative resources, who may be overworked and underpaid, and who will probably believe that his client is guilty. (Obviously, belief in the defendant's guilt may affect the performance of a privately retained attorney but, one suspects, to a lesser extent.) Thus, despite defense counsel's stance of vigorous resistance to the prosecution's case, he may, for various reasons, not have his heart in it.

Even more troubling, in their efforts to advance only the view of the case most favorable to their side, the attorneys may skew the truth-finding process. The attorney who is most skilled at choosing a favorable jury, at arguing to the jury, at locating witnesses, and at examining and cross-examining them is more likely to prevail, regardless of the defendant's actual guilt or innocence.

Finally, and most disturbing, this system, with its jurors who must be first induced to serve and then persuaded of the defendant's

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Two Models: Inquisitorial Themes in American Criminal Procedure, 26 Stan. L. Rev. 1009, 1018 (1974).

guilt or innocence, and its detailed procedural rules (to ensure fair play), is extremely cumbersome. Given the limited resources available to the criminal justice system and the high cost of jury trials,[3] the majority of cases must be resolved *without* a trial.[4] Instead, the system induces defendants to give up their rights and plead guilty, frequently by offering to convict them of lesser crimes than they supposedly committed, thus disadvantaging both the defendant and society.

In fact, the plea bargaining system is even worse than it appears on its face, because the weaker the prosecution's case, the more likely it is that a favorable bargain will be offered to the defendant. But "weakness" in the prosecution's case also correlates with innocence of the defendant. Thus, innocent defendants will, on average, be pressured more strongly than guilty ones to plead guilty (by highly favorable plea offers).[5]

The differences between the Anglo-American and the continental system have begun to diminish.[6] Defense lawyers now play a more prominent role on the continent, and suspects have more rights for those lawyers to protect.[7] Though jury trials remain in disfavor on the con-

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[3] *But see* Albert Alschuler, *Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System,* 50 U. Chi. L. Rev. 931 (1983) (arguing that for about $850 million more than was then being spent on the criminal justice system, every defendant could be given a 3-day jury trial).

[4] The National Center for State Courts found that in 13 jurisdictions surveyed, the percentage of felony cases resolved by jury trail ranged from a low of 2.1 in Texas to a high of 6.9 in Alaska. Jeffrey Abramson, *We, The Jury* 298 (1994).

[5] For an interesting discussion of this problem, *compare* Robert Scott & William Stuntz, *Plea Bargaining as Contract,* 101 Yale L.J. 1909, 1948–49 (1992), *with* Stephen Schulhofer, *Plea Bargaining as Disaster,* 101 Yale L.J. 1979, 1981–83 (1992).

[6] On convergence between the United States and Germany, see Richard Frase & Thomas Weigend, *German Criminal Justice as a Guide to American Law Reform: Similar Problems, Better Solutions?,* 18 B.C. Int'l & Comp. L. Rev. 317 (1995); *see also* Craig Bradley, *The Failure of the Criminal Procedure Revolution* 95–143 (1993) (discussing how various common law and civil law countries are moving toward a U.S.-style, rights-oriented approach to rules governing criminal investigation).

[7] On recent changes in France, see Stewart Field & Andrew West, *A Tale of Two Reforms: French Defense Rights and Police Powers in Transition,* 6 Crim. L.F. 473 (1995).

tinent,[8] a right against self-incrimination at trial, and against involuntary confessions, is now generally enforced, and the Netherlands has even adopted an exclusionary rule for evidence gained through illegal entry of the home by police.[9] *Miranda*-type warnings[10] are also generally required on the continent.

By contrast, while inquisitorial systems have become more adversarial, many of the examples of movement in the English (and the U.S.) system toward the continental model are, as will be discussed,[11] more in the realm of proposal than of fact.[12] Nevertheless, the overall trend is in the direction of a common middle.

The extent of convergence between the two models of criminal procedure is the overarching theme of *Criminal Justice in Europe.* This study calls on English and Welsh law,[13] on the one hand, and on Dutch law, on the other, to show the extent to which, in a wide range of areas, the common law and civil law systems are becoming more alike. Since, as noted above, each system has its strengths and weaknesses, any such thorough treatment of how various matters are handled under the two

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8 Jury trials were used in Germany between 1890 and 1920 and in the Netherlands from 1811 to 1813. Nico Jörg et al., *Prosecutors, Examining Judges, and Control of Police Investigations,* in *Criminal Justice in Europe* 227, 229 (Phil Fennell et al. eds., 1995). Jury trials have also been abandoned in Japan and India, and are used increasingly rarely in England. Stephen J. Adler, *The Jury* at xv–xvi (1994).

9 Nico Jörg et al., *Are Inquisitorial and Adversarial Systems Converging?,* in *Criminal Justice in Europe, supra* note 8, at 48, 54. Germany also has a limited exclusionary rule, but it depends more on balancing the nature of the evidence against the seriousness of the crime than it does on the way in which the evidence was obtained. Craig Bradley, *The Exclusionary Rule in Germany,* 96 Harv. L. Rev. 1032, 1048 (1983); Frase & Weigend, *supra* note 6, at 334.

10 A practice imported from England. Miranda v. Arizona, 384 U.S. 436, 486–88 (1966).

11 See *infra* text accompanying notes 33–37.

12 "Worries about the partisan nature of policing have led to calls for the introduction of a pretrial truth-finder such as the investigating judge." Jörg et al., *supra* note 9, at 49. Other "proposals include greater judicial involvement in indicating sentences and regulating deals." *Id.* at 52.

13 For most purposes, Scotland has a separate criminal justice system.

models represents an extremely valuable guide to how criminal procedure reform may be achieved not only on both sides of the North Sea but on both sides of the Atlantic as well.

The book's nineteen chapters examine subjects ranging from the general topics of criminal justice in the Netherlands and the United Kingdom, to specific topics such as treatment of juveniles and mentally disordered offenders. As such, the entire book will be of great interest to very few readers, but anyone interested in any aspect of comparative criminal procedure will find some part of this book to be an invaluable resource.

Criminal Justice in Europe begins unpromisingly with an essay by Constantijn Kelk, complaining generally that Dutch criminal law has lost its "humane" aspects and has become too "instrumental." That is, the Ministry of Justice "remains obsessed with extending the Prison Service as far as possible, which is what our punitive society seems to want."[14] While one might agree with these sentiments if concrete examples were offered, or if opposing arguments were presented and refuted, this essay has the air of preaching to the choir. It will be convincing only to readers who already share Kelk's views.

The book's second essay, "The Evolution of Criminal Justice Policy in the UK," by Gavin Dingwall and Alan Davenport, is much more informative. Dingwall and Davenport describe the mushrooming crime problem in England[15] and its effect on recent developments in criminal procedure.[16] In general, as crime rates went up in the postwar years, society demanded, and received, longer prison terms for offenders[17]

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[14] Constantijn Kelk, *Criminal Justice in the Netherlands,* in *Criminal Justice in Europe, supra* note 8, at 1, 19.

[15] In 1950, 500,000 crimes were reported to the police; in 1991, 5.4 million. Gavin Dingwall & Alan Davenport, *The Evolution of Criminal Justice Policy in the UK,* in *Criminal Justice in Europe, supra* note 8, at 21, 21.

[16] Presumably, the Netherlands has experienced a similar growth in crime, which has influenced the developments that Kelk, *supra* note 14, criticizes.

[17] Between 1960 and 1979, recorded crime in England and Wales rose by 177 percent and the prison population rose by 45 percent. Dingwall & Davenport, *supra* note 15, at 27. On the recent leveling off of crime rates, see Madeleine Sann, Documents Received, in this issue of *Criminal Law Forum,* at 495, 505.

and increased investigative powers for police. However, since the early nineties, in part because of the sheer cost of the prison system, and in part because harsher sentences were not producing less crime,[18] alternatives to incarceration have increasingly been sought. Dingwall and Davenport merely report these trends without criticizing or supporting them but, in this limited venture, the essay provides a useful background to the comparative discussions that follow.

Of greatest interest to me were the third chapter, "Are Inquisitorial and Adversarial Systems Converging?" by Nico Jörg, Stewart Field, and Chrisje Brants, and the eleventh, "Prosecutors, Examining Judges, and Control of Police Investigations," by Jörg, Field, and Peter Alldridge. These two essays, co-written by contributors representing the Netherlands and England and Wales, add extremely significant building blocks to the growing edifice of comparative criminal procedure literature.

Until recently, the narrow attitude in the United States, encouraged by the Supreme Court, was that the continental system depended upon the use of terror and torture suggested by its namesake, the Spanish Inquisition. In a famous passage from *Murphy v. Waterfront Commission of New York Harbor*,[19] the Supreme Court described the Anglo-American privilege against self-incrimination as follows:

> It reflects many of our fundamental values and most noble aspirations: our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminating statements will be elicited by inhumane treatment and abuses . . . .[20]

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18 Dingwall & Davenport, *supra* note 15, at 31.

19 378 U.S. 52 (1964).

20 *Id.* at 55; *accord* Culombe v. Connecticut, 367 U.S. 568, 581 (1961) (emphasis added) ("This principle [against self-incrimination], branded into the consciousness of our civilization by the memory of the secret inquisitions, sometimes practiced with torture, *which were borrowed briefly from the continent,* during the era of the Star Chamber, was well known to those who established the American governments.").

The notion that an "inquisitorial" system of justice was inextricably linked to torture and unreliable results, combined with Americans' traditional ignorance of other languages and cultures, and the elimination of states as "laboratories" due to the national uniformity of criminal procedure rules enforced by the U.S. Supreme Court, meant that Americans really had no sense of alternatives to the classic common law system. The U.S. adversarial/jury system, while often unpopular, is nevertheless generally thought to be the only fair way to proceed.

For example, I and, I'm sure, most of my contemporaries managed to pass through three years of law school without ever finding out that jury trials do not occur in criminal cases on the European continent. One's attitude toward such Supreme Court cases as *Williams v. Florida*[21] and *Apodaca v. Oregon*,[22] in which the Court held that twelve-person juries and unanimous verdicts were not constitutionally required, might well be influenced by the knowledge that perfectly civilized countries dispense with juries altogether.

In the 1970s, however, this insular attitude began to change, as scholars like Abraham Goldstein, John Langbein, Lloyd Weinreb, and Mirjan Damaska began to publish comparative articles in leading U.S. law journals.[23] Still, as suggested earlier, there is little in the case law to indicate that U.S. judges, and particularly the Supreme Court, have been influenced by the comparative material found in the legal literature: *Williams* and *Apodaca*, while containing extensive discussions of the English roots of our jury system, make no mention of continental procedure.[24]

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21 399 U.S. 78 (1970).

22 406 U.S. 404 (1972).

23 Abraham Goldstein & Martin Marcus, *The Myth of Judicial Supervision in Three "Inquisitorial" Systems: France, Italy, and Germany*, 87 Yale L.J. 240 (1977); John Langbein & Lloyd Weinreb, *Continental Criminal Procedure: "Myth" and Reality*, 87 Yale L.J. 1549 (1977); John Langbein, *Comparative Criminal Procedure* (1977); Mirjan Damaska, *Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study*, 121 U. Pa. L. Rev. 506 (1973). However, nearly four decades ago, Jerome Hall discussed the importance of the comparative approach in *The Fundamental Aspects of Criminal Law*, in *Essays in Criminal Science* 159 (Gerhard O.W. Mueller ed., 1961).

24 *Williams*, 399 U.S. at 87–98; *Apodaca*, 406 U.S. at 407–10. Even in the 1980s, Supreme Court Chief Justice Burger, Judge Malcolm Wilkey of the U.S. Court

To a large extent, the differences in criminal procedure reflect the different fundamental assumptions underlying the inquisitorial and the common law system. In inquisitorial systems, "the state is the benevolent and most powerful protector and guarantor of public interest and can, moreover, be trusted to 'police' itself as long as its authority is organized in a way that will allow it to do so."[25] In accusatorial systems, by contrast, there is "a negative image of the state and a minimalist view of its functions."[26] Thus, the accusatorial approach to criminal justice emphasizes separation of powers and the resolution of a conflict between equal parties.[27] These traditions mean that, in the Netherlands, the "most salient" feature of pretrial process is

> the degree to which all parties co-operate in arriving at a pre-prepared version of [the truth] that is subsequently recorded in a case file or dossier as the basis for the coming trial. Professional investigators employed by the state—police, forensic psychiatrists, and scientists—are expected not only to do most of the work, but to do it in a detached and impartial way, an assumption that allows the defence to leave most matters of investigation to [state officials].[28]

In England, instead:

> Each party is responsible for developing evidence to support its arguments. Investigation is motivated by self-interest rather than public interest. There is no investigating judge to seek out "truth" and, despite official rhetoric about impartiality in prosecution, the concrete legal duties of police and prosecution lawyers do not extend to seeking out exculpatory evidence.

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of Appeals for the D.C. Circuit, and others thought that "no other civilized nation in the world" had an exclusionary rule. Bradley, *supra* note 9, at 1032.

25 Jörg et al., *supra* note 9, at 44.

26 *Id.* at 45.

27 *Id.*

28 *Id.* at 47.

> Indeed, what constitutes truth is subject to negotiation by the parties. Extensive plea bargaining simply produces an agreed approximation of events. . . . It is rare for any judicial authority to challenge these agreed assertions.[29]

"Prosecutors, Examining Judges, and Control of Police Investigations" discusses in detail the different rules governing treatment of suspects by the police as a function of the different assumptions underlying the two types of criminal justice system. In the Netherlands, there are few formal rules and prosecutors see themselves as "magistrates . . . engaged in an impartial weighing of the different interests involved."[30] Indeed, for a prosecutor "to be thought heavily oriented to crime control [as opposed to due process] is a threat to one's self-image and career prospects."[31] If defense attorneys are dissatisfied with the "integrity of the police file," they can, even after the trial has begun, petition the judge to order further investigations upon a prima facie showing of inadequacy or illegal obtainment of evidence.[32]

The Dutch system is moving to some extent toward the adversarial model, as noted above,[33] but continues to reflect the basic belief that the organs of the state can be depended upon to pursue the criminal investigation and the trial fairly. Thus, in the Netherlands, the investigating judge may, under fairly broad circumstances, question witnesses out of the presence of the defense attorney, and those hearsay statements can be introduced at trial in the witness's absence.[34] Nevertheless, both the police and the prosecutor are increasingly seen as

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29 *Id.* at 48.

30 Jörg et al., *supra* note 8, at 236.

31 *Id.* at 237.

32 *Id.* at 238, 242.

33 See *supra* note 9 and accompanying text.

34 Jörg et al., *supra* note 8, at 239. However, this practice appears to be in conflict with the European Convention and thus is likely to change. Annemarieke Beijer et al., *Witness Evidence, Article 6 of the European Convention of Human Rights, and the Principle of Open Justice,* in *Criminal Justice in Europe, supra* note 8, at 283, 287–88.

partisan, with a concomitant recognition that formal rights must be accorded to suspects to resist official power.[35]

The contributors also suggest that the English system is, in some respects, becoming more inquisitorial. However, this "trend" is less clear:

> From an inquisitorial viewpoint the procedural safeguards [of the 1984 Police and Criminal Evidence Act—PACE] look like a step towards inquisitorial policing, in that they seek to provide guarantees of reliability essential to truth-finding. But to the adversarial eye, in the absence of a duty . . . to seek out all germane evidence—the changes are seen more in terms of equality of arms. Extended powers for the police necessitate extended rights for the defence.[36]

The reluctance in England and Wales to conform to continental procedures is further exemplified by the fact that whereas in the Netherlands the European Convention on Human Rights is directly enforceable in the courts, in the United Kingdom the convention and decisions of the European Court of Human Rights thereunder lack the force of law.[37]

Indeed, in the area of pretrial investigation by police, it is my view (the contributors do not make this point)[38] that the adversarial

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35 Jörg et al., *supra* note 8, at 239.

36 Jörg et al., *supra* note 9, at 49.

37 Even though England has been a party to the European Convention since 1966. *See generally* Bert Swart & James Young, *The European Convention on Human Rights and Criminal Justice in the Netherlands and the United Kingdom*, in *Criminal Justice in Europe*, *supra* note 8, at 57. The convention is, however, often a subsidiary source of law. *Id.* at 62.

38 Kelk, *supra* note 14, at 6–7, does point to "diminishing tolerance" in the Netherlands, which can "be seen in our attitude toward ethnic minorities," and concludes that this trend has contributed to "juridification" (the establishment of formal rules) "not because of any deep-seated interest in the classical values of liberty, equality and fraternity" but to establish "social control in the sense of supervision and one person watching another." I doubt that many Americans would have such a rosy view of human nature as to suppose that police do not require some "watching," especially when it comes to their treatment of minorities.

model, characterized by conviction-oriented police and prosecutors checked by aggressive assertion of rights by suspects and their attorneys, is the wave of the future. As societies become more diverse (i.e., more like the United States), the notion that government can be trusted to do right by minority groups seems anachronistic. The more informal approach of the continental system may be well suited to a society in which everyone is of the same or similar background. But it is not suitable where minority groups are mistrusted by, and mistrust, the majority and its police forces. In the absence of shared norms, formal delineation of rules by courts or legislatures, and their enforcement by counsel, are essential. Thus it is no surprise that the development of Dutch and even to some extent English[39] law governing police procedures in recent years has been in an adversarial, rights-oriented direction as the trend of those societies has been toward greater ethnic diversity.

Still, some developments in England and the United States, such as the requirement that exculpatory evidence be handed over to the defense[40] and, in some states, extensive mutual discovery obligations have a decidedly continental tone.[41]

But it is the inquisitorial *trial* that has the most to offer Anglo-American criminal justice, though it is an offer that has not been widely accepted. In both the United States and England and Wales, the jury trial continues to be much revered, even as it is actually used less and less (about 5 percent of criminal cases in both jurisdictions).[42] The process

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39 Bradley, *supra* note 6, at 96–108.

40 United States v. Bagley, 473 U.S. 667 (1985). In the United States, at least, this obligation extends to impeachment evidence. *Id.* at 678. However, in neither country are the police expected to search out all possibly exculpatory material nor necessarily even to hand over such material absent a request by the defense attorney. *Id.* at 681–82; *see also* Jörg et al., *supra* note 9, at 49.

41 Older features of the Anglo-American system such as "an organized police force and overt acceptance of police power to detain and interrogate in order to generate evidence against the suspect" originated with inquisitorial systems. Jörg et al., *supra* note 9, at 48; *see also* Goldstein, *supra* note 2, at 1018.

42 On Britain, see Laura Masnerus, *Under Fire, Jury System Faces Overhaul,* N.Y. Times, Nov. 4, 1995, at 9; on the United States, see Abramson, *supra* note 4, at 252 (citing statistics from the National Center for State Courts).

is too cumbersome, too expensive, and, in the view of many, too unjust.[43] A short, *mandatory,*[44] non-jury trial in the continental mode,[45] with few of the evidentiary restrictions that inhere in the usual jury trial, is a sensible alternative.[46]

As noted earlier, such trials are conducted by a presiding judge who has full access to the file and must justify the decision with a detailed written judgment that goes to the court of appeals. Counsel are limited to supplementing the judge's direct examination of witnesses, cross-examination, and closing argument. Moreover, the influence of the community need not be entirely eliminated, since lay judges can still be used, as in Germany.[47] Similarly, the continental model, in which the court, not the parties, chooses and then for the most part conducts the examination of expert witnesses seems a vast improvement over the "battling experts" system that prevails in the United States.[48] Finally, the right of the defense attorney to full access to the prosecutor's file seems a worthwhile step away from the trial as sporting event.

Still, as attractive as foreign models may be, the contributors repeatedly and rightly caution that because of the "deep-rooted nature of certain national concepts, procedures, and institutions, there may be dangers in transposing the approach of other systems without taking into account the depth of national tradition and outlook."[49] In particular, the

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43 *E.g.,* Masnerus, *supra* note 42.

44 Even if the defendant chooses to admit guilt, the presiding judge will still conduct a limited trail. Joachim Hermann, *Bargaining Justice: A Bargain for German Criminal Justice,* 53 U. Pitt. L. Rev. 755, 763 (1992).

45 In Germany, the average trial for less serious criminal cases takes about 2 hours; for more serious cases, about one day. Langbein, *supra* note 23, at 77. A similar pattern is documented in Supreme Court of Japan, *Criminal Justice in Japan* 14 (1987).

46 Lloyd Weinreb, *Denial of Justice* 117–64 (1977); Stephen Schulhofer, *Is Plea Bargaining Inevitable?,* 97 Harv. L. Rev. 1037 (1984).

47 For further discussion, see Bradley, *supra* note 9, at 1063.

48 Craig Bradley & Joseph Hoffmann, *Public Perception, Justice, and the "Search for Truth" in Criminal Cases,* S. Cal. L. Rev. (forthcoming 1996).

49 Christopher Harding et al., *Conclusion—Europeanization and Convergence: The Lessons of Comparative Study,* in *Criminal Justice in Europe, supra* note 8, at 379, 386.

career civil servant judges of the continental system may be better trained and better able to conduct a trial dispassionately than the elected or politically appointed judges in the United States. Moreover, minority confidence in determinations of guilt may suffer if judges, rather than juries, decide criminal cases.[50] But, whatever the dangers may be, there can be no dispute that greater knowledge of other systems is tremendously valuable, and it is to this growing body of knowledge that *Criminal Justice in Europe* makes an important contribution.

[50] As would the educative function of widespread citizen participation in juries. However, if lay judges sat in many more and shorter trials than are currently held, the total amount of citizen participation might not be much reduced.